

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JAMES ERIC LOFTEN	§	
TDCJ-CID #616132	§	
V.	§	C.A. NO. C-05-191
	§	
U.S. GOVERNMENT, ET AL.	§	

**MEMORANDUM AND RECOMMENDATION TO DENY
PLAINTIFF’S MOTION TO AMEND AND FOR NEW TRIAL**

Having lost the privilege to proceed *in forma pauperis* (“i.f.p.”),¹ plaintiff was ordered to pay the \$250.00 civil filing fee by August 25, 2005, to proceed with this action. See D.E. 13. Plaintiff failed to pay timely the filing fee, and by Memorandum and Recommendation entered September 15, 2005, it was recommended that plaintiff’s action be dismissed for failure to prosecute (D.E. 21). The recommendation to dismiss is still pending.

On December 2, 2005, plaintiff filed a “Motion to Add and Amend Findings and [for] New Trial” (D.E. 26-1, 26-2). In this motion, plaintiff complains, *inter alia*, about past procedural rulings by the undersigned and about allegedly inadequate legal supplies at the McConnell Unit.

To the extent plaintiff’s motion is construed as a request for new trial, it is recommended that his motion (D.E. 26-1, 26-2) be denied as premature as no final judgment has been entered. Similarly, no findings of fact have been made on the merits of plaintiff’s claims such that his request to add or amend findings is without any basis. To the extent plaintiff is again moving for the recusal of the undersigned magistrate judge and /or a request to “add” as findings plaintiff’s complaints against the undersigned, it is recommended that his request be denied for the same reasons set forth

¹ Plaintiff is an abusive litigant with over three “strikes” against him having had dismissed as frivolous or for failure to state a claim numerous civil proceedings. See 28 U.S.C. § 1915(g).

in the August 25, 2005 Memorandum and Recommendation recommending that plaintiff's request for recusal and disqualification be denied (D.E. 21).²

Respectfully submitted this 13th day of January, 2006.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to FED. R. CIV. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 2001-6, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Serv's Auto. Ass'n, 79 F.3d 1415 (5th Cir.1996) (en banc).

² That recommendation is still pending.